

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

FEB 27 2007

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2006-0287-PR
)	DEPARTMENT B
v.)	
)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
JOHN CLAUDE DANIELS,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20043170

Honorable Charles S. Sabalos, Judge

REVIEW GRANTED; RELIEF DENIED

John C. Daniels

Buckeye
In Propria Persona

E S P I N O S A, Judge.

¶1 Petitioner John Daniels pled guilty to manslaughter and was sentenced to an aggravated, twenty-year term of imprisonment. Daniels has filed this petition for review following the trial court's denial of his request for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S. We grant review but deny relief.

¶2 Pursuant to the plea agreement, Daniels waived his right to “all trials,” including “any jury determination of aggravating factors beyond a reasonable doubt.” (Emphasis deleted.) At sentencing, the court found the existence of five aggravating factors: “Defendant’s failure to render aid to the victim, his flight from the jurisdiction to avoid prosecution, the emotional harm to the victim’s family, the betrayal of trust, [and] the taking of property during the commission of the offense.” In his petition for post-conviction relief, Daniels claimed that the court had improperly considered the first of these, arguing he had been under no legal obligation to render aid to his victim and that, in any event, the stab wound to the victim’s heart he had inflicted had been so immediately fatal that any such aid would not have saved the victim’s life. The trial court found Daniels had failed to present a material issue of fact or law that would entitle him to relief and summarily dismissed the petition.

¶3 In his petition for review, Daniels does not challenge the trial court’s findings on the issues raised below. Instead, he raises an entirely different issue, claiming the trial court erred in sentencing him to an aggravated prison term based on facts other than a prior conviction that were neither found by a jury nor admitted by him, in violation of *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004). We need not address this claim; Daniels waived it by failing to raise it in his petition for post-conviction relief. *See State v. Herrera*, 183 Ariz. 642, 648, 905 P.2d 1377, 1383 (App. 1995). But, even absent that

technicality, the claim lacks any merit. In the plea agreement, Daniels expressly waived the jury trial right he now claims was violated.

¶4 In essence, Daniels presents this court with no substantive issue to consider. Accordingly, although we grant review, we deny relief.

PHILIP G. ESPINOSA, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

J. WILLIAM BRAMMER, JR., Judge